

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: ATMOS ENERGY CORPORATION	DOCKET NO. P-851
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**ORDER ESTABLISHING PROCEDURAL SCHEDULE AND PROPOSING TO
TAKE OFFICIAL NOTICE AND NOTICE OF HEARING**

(Issued March 24, 2003)

On January 10, 2003, Atmos Energy Corporation (Atmos) filed a petition and exhibits for a permit to construct, operate, and maintain a natural gas pipeline approximately 16.35 miles long in Lee County, Iowa. The proposed 10-inch diameter pipeline will transport natural gas from the existing Atmos South Fort Madison District Metering and Regulator Station to a proposed cogeneration facility to be constructed by Roquette America, Inc. (Roquette), in Keokuk, Iowa. Atmos filed amendments to its petition and exhibits on February 10, February 25, and March 4, 2003. In the petition, the proposed pipeline is referred to as the Roquette-America Lateral.

On March 18, 2003, the Utilities Board (Board) assigned this proceeding to a presiding officer and directed that a procedural schedule be established and a date set for hearing.

The Board's Authority and Jurisdiction

The Board has authority to grant permits for pipelines in whole or in part upon terms, conditions, and restrictions as to safety requirements, and as to location and

route, as it determines to be just and proper. Iowa Code §§ 479.12 and 479.18 (2003).

To obtain a permit, the petitioner must show that the services it proposes to render will promote the public convenience and necessity. Iowa Code § 479.12. The petitioner must also satisfy the financial requirements of Iowa Code § 479.26.

The Issues

Pursuant to Iowa Code §§ 479.7 and 479.8 and 199 IAC 10.6, this matter will be set for a public hearing for the presentation of oral and documentary evidence and the cross-examination of witnesses concerning the public convenience and necessity issue, any safety issues, any pipeline location and route issues, the financial issues, land restoration plan issues, and issues raised by objectors or any other party. The conduct of this case is governed by Iowa Code Chapters 17A and 479, and by Board rules at 199 IAC Chapter 10.

Prepared Testimony and Exhibits

All parties will be given the opportunity to present and respond to evidence and argument on all issues, and to be represented by counsel at their own expense. Iowa Code § 17A.12(4). The proposed decision and order that the administrative law judge will issue in this case must be based on evidence contained in the record and on matters officially noticed in the record. Iowa Code § 17A.12(8). Unless contrary arrangements are made on the record at the hearing, all evidence will be received at

the hearing, and the record will be closed to any further evidence at the conclusion of the hearing.

The submission of prepared evidence prior to hearing will help to identify disputed issues of fact to be addressed at the hearing. Prepared testimony contains all statements that a witness intends to give under oath at the hearing, set forth in question and answer form. When a witness who has submitted prepared testimony takes the stand, the witness does not ordinarily repeat the written testimony or give a substantial amount of new testimony. Instead, the witness is cross-examined by the other parties concerning the statements already made in writing. The use of prepared testimony prevents surprise at the hearing and helps each party to prepare adequately for the hearing, so that a full and true disclosure of the facts can be obtained. Iowa Code §§ 17A.14(1), 17A.14(3) and 479.11. This procedure also tends to diminish the length of the hearing, and spares the parties the expense and inconvenience of additional hearings.

Atmos must submit prepared testimony and exhibits prior to the hearing. At a minimum, Atmos' prepared testimony must address the issues listed above, and must address the issues identified in the memo dated March 10, 2003, by Mr. Don Stursma, attached to this order. In addition, Atmos must file a revised Petition Exhibit E showing it has obtained consent as discussed on page three of Mr. Stursma's memo. 199 IAC 10.2(1)"e."

On March 11, 2003, Roquette filed a petition to intervene in this proceeding, which was granted by the Board in the order dated March 18, 2003. If Roquette chooses to file prepared testimony, it must do so in accordance with the procedural schedule established below. The Consumer Advocate Division of the Department of Justice (Consumer Advocate), and any objectors may also file prepared testimony and exhibits before the hearing in accordance with the procedural schedule.

Parties other than Atmos who choose not to file prepared testimony and exhibits before the hearing will not be precluded from participating in the proceedings. If an objector, for example, does not intend to present evidence going substantially beyond the information contained in the letter of objection, it is unnecessary for the objector to file prepared testimony. However, when a party has a substantial amount of information to present to the Board about the petition, if the information has not been previously disclosed to the Board, it should be presented in the form of prepared testimony and exhibits according to the procedural schedule established below.

Party Status

Atmos, Roquette, and the Consumer Advocate are currently the only parties to this proceeding. Iowa Code §§ 17A.2(8) and 475A.2(2). No one has filed an objection to the petition as of the date of this order. Atmos does not request the right of eminent domain for this pipeline.¹

¹ The attached memo from Mr. Stursma contains a typographical error on the first page that makes it appear Atmos has requested the right of eminent domain. It has not.

Anyone who has filed or will file an objection pursuant to Iowa Code §§ 479.9 and 479.10 and 199 IAC 10.5 will also be presumed to be a party to this case. However, no objector is entitled to party status merely because that person has written a letter of objection. In order to qualify as a party, the objector must be able to demonstrate some right or interest that may be affected by the granting of the permit. Iowa Code § 479.9. An objector's status as a party may be challenged at the hearing, and an objector who cannot demonstrate a right or interest that may be affected by the granting of the permit will no longer be considered a party. Therefore, at a minimum, objectors should be prepared to give evidence that will explain the nature of their specific rights or interests they believe should be protected, and will show how these rights or interests will be affected by the pipeline. As has already been noted, to the extent that the evidence goes substantially beyond information already communicated to the Board in an objection letter, it should be reduced to writing and filed as prepared testimony according to the procedural schedule established below.

Because objectors will be presumed to be parties up to the time of the hearing, an objector will receive copies of all documents that are filed in this docket after the letter of objection has been filed with the Board. This means that if a person files an objection after some or all of the prepared testimony and exhibits has been filed with the Board by other parties, the objector should make direct contact with the parties who have already filed prepared testimony and exhibits in order to obtain a copy of

those materials. The official file of this case will be available for inspection at the Utilities Board Records and Information Center, 350 Maple Street, Des Moines, Iowa. 199 IAC 1.9(1).

Objections must be filed no less than five days prior to the date of hearing. Late-filed objections may be permitted if good cause is shown. 199 IAC 10.5. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

After an objector has filed a letter of objection, all further communications from the objector to the Board having to do with this case (including motions or prepared testimony and exhibits) should be sent to the Executive Secretary of the Board. A party (including objectors) must file an original and two copies of each communication with the Executive Secretary and the party must send one copy to each of the other parties to this case. 199 IAC 1.8. Along with the communication being sent, the party must file with the Board a certificate of service that conforms to 199 IAC 2.2(16), which verifies a copy of the document was served upon the other parties.

These procedures are necessary to comply with Iowa Code § 17A.17, which prohibits ex parte communication. Ex parte communication is when one party in a contested case communicates with the judge without the other parties being given the opportunity to be present. In order to be prohibited, the communication must be about the facts or law in the case. Calls to the Board to ask about procedure or the

status of the case are not ex parte communication. Ex parte communication may be oral or written. This means the parties in this case may not communicate about the facts or law in this case with the undersigned administrative law judge unless the other parties are given the opportunity to be present, or unless the other parties are provided with a copy of the written documents filed with the Board.

The parties should examine 199 IAC Chapter 10 and 199 IAC 1.8 for other substantive and procedural rules that apply to this case. There is a link to the administrative rules on the Board's website at www.state.ia.us/iub.

Proposal to Take Official Notice

Mr. Don Stursma, manager of the Board's Safety & Engineering Section, has prepared a memo dated March 10, 2003, concerning Atmos' petition pursuant to Iowa Code § 479.11. A copy of the memo is attached to this order. Pursuant to Iowa Code § 17A.14(4), the undersigned administrative law judge proposes to take official notice of the memo and of the facts contained therein, with the correction that Atmos does not seek eminent domain, thus making them a part of the record of this case. Iowa Code § 17A.12(6)(c). Any party objecting to the taking of official notice of the memo must file such objection as soon as possible, and no later than five days prior to the hearing. The parties will have the opportunity to contest any information contained in the memo in prepared testimony and at the hearing. Mr. Stursma will be present at the hearing and available for cross-examination regarding his memo.

IT IS THEREFORE ORDERED:

1. Each person who files a letter of objection to Atmos' petition in this docket will be presumed to be a party in the proceeding unless it is established at hearing that the objector has no right or interest that may be affected by the pipeline.
2. Objections must be made in writing and filed with the Executive Secretary of the Board, 350 Maple Street, Des Moines, Iowa 50319-0069, no later than five days before the hearing. Objectors must file an original and two copies of all subsequent communications to the Board with the Executive Secretary. The communications must be accompanied by a certificate of service as discussed in this order.
3. The following procedural schedule is established:
 - a. On or before April 8, 2003, Atmos must file prepared direct testimony relating to its petition for a permit to construct, operate, and maintain a natural gas pipeline, as discussed in this order. If Roquette chooses to file prepared testimony, it must do so on or before April 8, 2003.
 - b. If the Consumer Advocate or any objector chooses to file prepared responsive testimony, it must do so on or before April 22, 2003.
 - c. A public hearing for the presentation of evidence and the cross-examination of witnesses concerning the issues identified in this notice of hearing will be held beginning at 10 a.m. on Thursday, May 1, 2003, in the Mississippi Room at the Holiday Inn Express, 4th and Main, Keokuk, Iowa.

The Consumer Advocate has stated it wishes to be connected to the hearing by telephone conference call. The Consumer Advocate, and any other person who wishes to be connected by telephone conference call, must provide the telephone number at which the person may be reached to the undersigned no later than April 28, 2003. The undersigned will initiate the telephone conference call from the hearing. Persons with disabilities who will require assistive services or devices to observe this hearing or participate in it should contact the Board at (515) 281-5256 no later than April 24, 2003, to request that appropriate arrangements be made.

d. Required number of copies. All parties must file an original and two copies of all documents filed with the Board. 199 IAC 1.8(4)"d".

4. The undersigned administrative law judge proposes to take official notice of Mr. Stursma's memo dated March 10, 2003, and attached to this order, and of the facts contained therein, with the correction that Atmos does not seek eminent domain. Any party objecting to the taking of official notice of the memo should file such objection as soon as possible, and must file such objection no later than five days prior to the hearing. Any party desiring to cross-examine Mr. Stursma concerning the statements in the memo must file a notice of intent to cross-examine no later than five days prior to the hearing.

5. Pursuant to Iowa Code §§ 17A.12(1) and 199 IAC 10.4, a copy of this order will be served by ordinary mail upon Atmos, Roquette, and the Consumer

Advocate. No persons have filed objections to the petition as of the date of this order.

6. Atmos must work with Board staff regarding publication of notice pursuant to Iowa Code § 479.7 and 199 IAC 10.4, and must file proof of publication prior to or at the hearing.

UTILITIES BOARD

/s/ Amy L. Christensen
Amy L. Christensen
Administrative Law Judge

ATTEST

/s/ Judi K. Cooper
Executive Secretary

Dated at Des Moines, Iowa, this 24th day of March, 2003.

Department of Commerce
UTILITIES DIVISION
SAFETY & ENGINEERING SECTION

TO: DOCKET NO. P-851

FROM: DON STURSMA

DATE: MARCH 10, 2002

SUBJ: ATMOS PETITION FOR PIPELINE PERMIT

On January 10, 2003, Atmos Energy Corporation (Atmos) filed a petition and exhibits seeking pipeline permit to construct, operate and maintain 16.3 miles of 10-inch diameter, steel natural gas pipeline in Lee County, Iowa, with a maximum allowable operating pressure of 1350 psig. The pipeline would deliver gas from Atmos' South Fort Madison District Metering and Regulator Station to the Roquette Plant (Roquette) in Keokuk, Iowa.

Roquette operates a corn wet-milling processing facility in Keokuk, Iowa, and is proposing to construct a cogeneration facility in order to supply electricity to its processing facility. The facility will be located on land immediately adjacent to the processing facility that is zoned as heavy industrial.

An informational meeting was held in Keokuk on November 7, 2002, pursuant to Iowa Code § 479.5 (2001).

Petition

A review of the petition revealed items requiring correction or clarification. Atmos was notified of the deficiencies by letters dated January 29, February 19, and February 28, 2003. Atmos filed revised petition and exhibits on February 10, 2003, a revised Exhibit B on February 25, 2003, and a third revised Exhibit B on March 4, 2003.

All private easements except one have been acquired. The petition does request the right of eminent domain for this property. No objections have been filed as of the date of this report.

Natural gas pipelines must comply with the federal pipeline safety standards of 49 CFR Part 192, which have been adopted by the Board in 199 IAC 10.12(1)"b". Atmos states the entire line will be designed, constructed, and tested to meet Class 3

Standards, the design level for urbanized areas, even though only 2.28 miles of it is Class 3; the rest is less developed or rural.

Atmos is proposing to use a pipe wall thickness of 0.279 inches, and states the normal operating pressure would be 700-800 psig (at least initially). At these pressures, the pipeline will be operating at less than 30% of SMYS-the theoretical leak versus rupture stress level. Atmos is proposing the use of the heavier wall thickness for public and employee safety, future capacity, and cost saving reasons. The additional strength of the pipeline addresses concerns regarding public safety in case of third party damage and employee safety during welding operations on thin walled pipelines.

Atmos requests a maximum allowable operating pressure of 1350 psig, despite the maximum pressure of 975 psig available from the interstate pipeline gas supplier, ANR Pipeline. Staff understands the Roquette anticipates adding additional generating capacity in the future. However, ANR cannot serve the future anticipated loads of Roquette without modifying its pipeline system. ANR's options include increasing the delivery pressure to Atmos to 1350 psig either by uprating the MAOP of the ANR main lines or installing a compressor on the Atmos line. Atmos maintains that by designing and testing the proposed pipeline for the higher MAOP, it can avoid the cost and work associated with uprating the pipeline if its operating pressure is increased in the future. To insure the record is clear on this issue, Atmos should be asked to address this in hearing testimony.

If the MAOP is raised to 1350 psig, the pipe stress would go up to 50% of SMYS. This is above the rupture threshold, but within the limits permitted by the federal safety standards for developed areas.

Staff was initially concerned about passing on the extra cost of the higher pressure design to ratepayers, especially since the additional pressure capacity seemed speculative and primarily for the benefit of one customer. Atmos responded that the project is being funded by "Aid to Construction" from Roquette, and it anticipates the cost associated with this pipeline will not be passed on to its Iowa customers.

At areas where the pipeline will parallel electric lines, Atmos states that it will install magnesium anodes along the line to serve as AC grounds if it determines there is stray alternating current in the area. This will drain any mitigating AC current to an acceptable range. Atmos will install above ground checkpoints at each location that an anode has been placed for monitoring anode dissipation.

Petition Exhibit E is to contain copies of the consents received from road or railroad authorities for longitudinal occupancy of road or railroad right-of-way, or for crossings of such right-of-way at other than an approximate right angle. Atmos'

Exhibit E lists the locations where such consents will be required. It appears approvals will be required from the BN&SF Railroad, Lee County, the Iowa Department of Transportation (IDOT), and the City of Keokuk. IDOT rules do not normally allow a pipeline operating above 150 psig to be placed longitudinally in road right-of-way. Staff is aware that IDOT has issued a waiver of its rules to permit such occupancy at three locations for this project. However, no copies of any consent have been filed as of the date of this report. The law and Board rules do not allow construction until consents are obtained, but do not require that they be obtained prior to the granting of a permit. (Iowa Code 479.24, 199 IAC 10.2(1)e). Atmos should be advised of the necessity of filing these consents before construction can commence.

Exhibit B also proposes that a number of the roads be open cut rather than bored under. This is rather unusual for a pipeline; usually all road crossings are bored. But an open cut crossing is within the discretion of the county and requires no action by the Board.

The majority of the route is on agricultural land. Staff review of Atmos' land restoration plan concludes that the plan, as amended on February 10, 2003, is in substantial compliance with the applicable provisions of 199 IAC Chapter 9.

I have reviewed the petition and exhibits in this docket. It appears from the information presented that the proposed pipeline would comply with all design, testing, and construction requirements of the Iowa Utilities Board.

Route

The route was inspected on November 7 and 8, 2002, based on route information presented at the Informational Meeting. See attached November 8, 2002, Memo. The route in the petition filing conformed to the route inspected, and the air photo based maps provided as Exhibit B provided further information on route details. Note that the route inspection report presumed the route would follow Wirtz Lane, but the petition route shows it well east of that road; and an industrial building along the Highway 61 bypass is much closer than anticipated during the inspection because the pipeline would be towards the east side of the existing easement.

The inspection report noted some problems with marker signs and test box covers on the existing pipeline routes. This information has not yet been communicated to Atmos. Atmos should be asked to respond to this item in its hearing testimony. Ideally, as part of the proposed project all marker signs on over the existing pipelines will be replaced with new Atmos signs.

The proposed route follows for approximately 10.5 miles an existing double pipeline route from the ANR pipeline connection to Wirtz Lane north of Keokuk. From there it would follow Wirtz Lane and Highway 61 Bypass to Highway 136, then south and east along Twin Rivers Drive, Commercial Street and other streets to the Roquette Plant. There is industrial and residential development along Highway 61 Bypass, the area south of Highway 136 is primarily in old and new industrial land use. According to Exhibit C, the 9.69 miles of the route is Class 1 (rural), 4.28 miles is Class 2 (limited development) and 2.28 miles is Class 3 (significant development).² Because the entire pipeline would meet Class 3 construction and testing standards, staff did not attempt to determine the precise limits of the various class location areas.

The majority of the route north of Keokuk is on flat agricultural land. However, near Keokuk the route becomes increasingly rugged and passes through heavily timbered areas. In some places the existing pipeline right-of-way through those areas has become overgrown and it appears substantial tree clearing will be required to install a new pipeline. Portions of the route along the Highway 61 Bypass will also require substantial tree trimming. The area along Twin Rivers Drive and Commercial Street is an old industrial area. Construction may be difficult due to congested work space and old building materials in the path of the trench.

Although the route is partially in Class 2 and 3 areas, there are relatively few buildings in close proximity to the route. Buildings are located within 100 feet at the following locations. There are no code compliance issues at these sites and the information is presented only for informational purposes.

Near Milepost 79+00: Several mobile homes. (Existing pipeline easement)
Near Milepost 552+00: An apparent residence. (Existing pipeline easement)
Near Milepost 597+00: Building on industrial plant site 14'4" away (Existing pipeline easement)
Near Milepost 692+00: Buildings in Alliant Energy electric substation. (New easement)
Near Milepost 717+00: Residence approximately 60 feet from pipeline, garage closer. (Pipeline in highway right-of-way to maximize separation – see IDOT waiver.)
Near Milepost 784: Old industrial buildings. (Street right-of-way)
Near Milepost 833: From this point on there are numerous industrial buildings and facilities apparently associated with the end user, Roquette. (Street right-of-way)

In Exhibit D Atmos explains alternate routes reviewed and why the proposed route was selected. Staff also notes that the Iowa DOT waiver permitting the pipeline to be placed in Highway 61 Bypass right-of-way in three locations contains additional

² For the origin of the class location system and explanation of how the class location is determined, see 49 CFR 192.5.

details on route selection in those areas. Staff will not rehash that information in this report but believes the route selection was reasonable.

Exhibit B shows that most of the pipeline would be built on existing easements. It is staff's understanding that where the proposed route parallels the existing pipelines, Atmos has existing easements which allow for the construction of another pipeline. Staff further understands that from the point of departure to the existing pipeline route south to Carbide Lane, the route is on mostly easements Atmos had acquired for other purposes prior to this project. The exceptions are selected areas along the Highway 61 Bypass where short sections of new easement are indicated. From Carbide Lane to the area where the pipeline turns west to follow Twin Rivers Drive, the route is shown on a combination of new private easement and highway right-of-way. Staff understands that a private easement route was originally contemplated, but certain sections were ultimately proposed for Iowa Department of Transportation highway right-of-way to avoid difficult terrain or to maximize distance from homes or buildings. Along Twin Rivers Drive, Commercial Street, and several other streets towards the end of the route, the route is mostly on city street right-of-way, with the balance being several small private property easements where necessary to avoid obstacles. While much of the above information is shown on Exhibit B, it is not explained in text in the filing. Staff recommends that information on the nature of the easements, and public vs. private right-of-way issues, be explained in Atmos' hearing testimony so the record is clear.

Conclusions

The filing appears in sufficient order that the petition can be set for hearing. Several issues that should be addressed in Atmos hearing testimony are identified in the report.